EVERYTHING A HACKER NEEDS TO KNOW ABOUT GETTING BUSTED BY THE FEDS

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FOREWORD

Nobody wants to get involved in a criminal case and I've yet to meet a hacker who was fully prepared for it happening to them. There are thousands of paper and electronic magazines, CD-ROMS, web pages and text files about hackers and hacking available, yet there is nothing in print until now that specifically covers what to do when an arrest actually happens to you. Most hackers do not plan for an arrest by hiding their notes or encrypting their data, and most of them have some sort of address book seized from them too (the most famous of which still remains the one seized from The Not So Humble Babe). Most of them aren't told the full scope of the investigation

up front, and as the case goes on more comes to light, often only at the last minute. Invariably, the hacker in question was wiretapped and/or narced on by someone previously raided who covered up their own raid or minimized it in order to get off by implicating others. Once one person goes down it always affects many others later. My own experience comes from living with a retired hacker arrested ten months after he had stopped hacking for old crimes because another hacker informed on him in exchange for being let go himself. What goes around, comes around. It's food for thought that the hacker you taunt today will be able to cut a deal for himself by informing on you later. From what I've seen on the criminal justice system as it relates to hackers, the less enemies you pick on the better and the less groups you join and people who you i nteract with the better as well. There's a lot to be said for being considered a lamer and having no one really have anything to pin on you when the feds ask around.

I met Agent Steal, ironically, as a result of the hackers who had fun picking on me at Defcon. I posted the speech I gave there on the Gray Areas web page (which I had not originally intended to post, but decided to after it was literally stolen out of my hands so I could not finish it) and someone sent Agent Steal a copy while he was incarcerated. He wrote me a letter of support, and while several hackers taunted me that I had no friends in the community and was not wanted, and one even mailbombed our CompuServe account causing us to lose the account and our email there, I laughed knowing that this article was in progress and that of all of the publications it could have been given to first it was Gray Areas that was chosen.

This article marks the first important attempt at cooperation to inform the community as a whole (even our individual enemies) about how best to protect themselves. I know there will be many more hacker cases until hackers work together instead of attacking each other and making it so easy for the government to divide them. It's a sad reality that NAMBLA, deadheads, adult film stars and bookstores, marijuana users and other deviant groups are so much more organized than hackers who claim to be so adept at, and involved with, gathering and using information. Hackers are simply the easiest targets of any criminal subculture. While Hackerz.org makes nice T-shirts (which they don't give free or even discount to hackers in jail, btw), they simply don't have the resources to help hackers in trouble. Neither does the EFF, which lacks lawyers willing to work pro bono (free) in most of the 50 states. Knight Lightning still owes his attorney money. So does Bernie S. This is not something that disappears from your life the day the case is over. 80% or more of prisoners lose their lovers and/or their families after the arrest. While there are notable exceptions, this has been true for more hackers than I care to think about. The FBI or Secret Service will likely visit your lovers and try to turn them against you. The mainstream media will lie about your charges, the facts of your case and the outcome. If you're lucky they'll remember to use the word "allegedly." While most hackers probably think Emmanuel Goldstein and 2600 will help them, I know of many hackers whose cases he ignored totally when contacted. Although he's credited for helping Phiber Optik, in reality Phiber got more jail time for going to trial on Emmanuel's advice than his co-defendants who didn't have Emmanuel help them and pled instead. Bernie S. got his jaw broken perhaps in part from the government's anger at Emmanuel's publicizing of the case, and despite all the attention Emmanuel has gotten for Kevin Mitnick it didn't stop Mitnick's being put in solitary confinement or speed up his trial date any. One thing is clear though. Emmanuel's sales of 2600 dramatically increased as a result of covering the above cases to the tune of over 25,000 copies per issue. It does give pause for thought, if he cares so much about the hackers and not his own sales and fame, as to why he has no ties to the Hackerz.org defense fund or why he has not started something useful of his own. Phrack and other zines historically have merely reposted incorrect newspaper reports which can cause the hackers covered even more damage. Most of your hacker friends who you now talk to daily will run from you after your arrest and will tell other people all sorts of stories to cover up the fact they don't know a thing. Remember too that your "friends" are the people most likely to get you arrested too, as even if your phone isn't wiretapped now theirs may be, and the popular voice bridges and conference calls you talk to them on surely are.

They say information wants to be free, and so here is a gift to the community (also quite applicable to anyone accused of any federal crime if one substitutes another crime for the word hacking). Next time you put down a hacker in jail and laugh about how they are getting raped while you're on IRC, remember that someone is probably logging you and if you stay active it's a good bet your day will come too. You won't be laughing then, and I hope you'll have paid good attention when you're suddenly in jai l with no bail granted and every last word you read here turns out to be true. Those of us who have been there before wish you good luck in advance. Remember the next time you put them down that ironically it's them you'll have to turn to for advice shoul d it happen to you. Your lawyer isn't likely to know a thing about computer crimes and it's the cases of the hackers who were arrested before you which, like it or not, will provide the legal precedents for your own conviction.

Netta "grayarea" Gilboa

INTRODUCTION

The likelihood of getting arrested for computer hacking has increased to an unprecedented level. No matter how precautionary or sage you are, you're bound to make mistakes. And the fact of the matter is if you have trusted anyone else with the know ledge of what you are involved in, you have made your first mistake.

For anyone active in hacking I cannot begin to stress the importance of the information contained in this file. To those who have just been arrested by the Feds, reading this file could mean the difference between a three-year or a one-year sentence. To those who have never been busted, reading this file will likely change the way you hack, or stop you from hacking altogether.

I realize my previous statements are somewhat lofty, but in the 35 months I spent incarcerated I've heard countless inmates say it: "If I knew then what I know now." I doubt that anyone would disagree: The criminal justice system is a game to be played, both by prosecution and defense. And if you have to be a player, you would be wise to learn the rules of engagement. The writer and contributors of this file have learned the hard way. As a result we turned our hacking skills during the times of our incarceration towards the study of criminal law and, ultimately, survival. Having filed our own motions, written our own briefs and endured life in prison, we now pass this
knowledge back to the hacker community. Learn from our experiences... and our mistakes.

Agent Steal

PART I - FEDERAL CRIMINAL LAW

A. THE BOTTOM LINE - RELEVANT CONDUCT

For those of you with a short G-phile attention span I'm going to cover the single most important topic first. This is probably the most substantial misunderstanding of the present criminal justice system. The subject I am talking about is referred to in legal circles as "relevant conduct." It's a bit complex and I will get into this. However, I have to make his crystal clear so that it will stick in your heads. It boils down to two concepts:

I. ONCE YOU ARE FOUND GUILTY OF EVEN ONE COUNT, EVERY COUNT WILL BE USED TO CALCULATE YOUR SENTENCE

Regardless of whether you plea bargain to one count or 100, your sentence will be the same. This is assuming we are talking about hacking, code abuse, carding, computer trespass, property theft, etc. All of these are treated the same. Other crimes you committed (but were not charged with) will also be used to calculate your sentence. You do not have to be proven guilty of every act. As long as it appears that you were responsible, or someone says you were, then it can be used against you. I know this sounds insane , but it's true; it's the preponderance of evidence standard for relevant conduct. This practice includes using illegally seized evidence

and acquittals as information in increasing the length of your sentence.

II. YOUR SENTENCE WILL BE BASED ON THE TOTAL MONETARY LOSS

The Feds use a sentencing table to calculate your sentence. It's simple; More Money = More Time. It doesn't matter if you tried to break in 10 times or 10,000 times. Each one could be a count but it's the loss that matters. And an unsuccessful attempt is treated the same as a completed crime. It also doesn't matter if you tried to break into one company's computer or 10. The government will quite simply add all of the estimated loss figures up, and then refer to the sentencing table.

B. PREPARING FOR TRIAL

I've been trying to be overly simplistic with my explanation. The United States Sentencing Guidelines (U.S.S.G.), are in fact quite complex. So much so that special law firms are forming that deal only with sentencing. If you get busted, I would highly recommend hiring one. In some cases it might be wise to avoid hiring a trial attorney and go straight to one of these "Post Conviction Specialists." Save your money, plead out, do your time. This may sound a little harsh, but considering the fact that the U.S. Attorney's Office has a 95% conviction rate, it may be sage advice. However, I don't want to gloss over the importance of a ready for trial posturing. If you have a strong trial attorney, and have a strong case, it will go a long way towards good plea bargain negotiations.

C. PLEA AGREEMENTS AND ATTORNEYS

Your attorney can be your worst foe or your finest advocate. Finding the proper one can be a difficult task. Costs will vary and typically the attorney asks you how much cash you can raise and then says, "that amount will be fine". In actuality a simple plea and sentencing should run you around $15,000. Trial fees can easily soar into the 6 figure category. And finally, a post conviction specialist will charge $5000 to $15,000 to handle your sentencing presentation with final arguments.

You may however, find yourself at the mercy of The Public Defenders Office. Usually they are worthless, occasionally you'll find one that will fight for you. Essentially it's a crap shoot. All I can say is if you don't like the one you have, fire them and hope you get appointed a better one. If you can scrape together $5000 for a sentencing (post conviction) specialist to work with your public defender I would highly recommend it. This specialist will make certain the judge sees the whole picture and will argue in the most effective manner for a light or reasonable sentence. Do not rely on your public defender to thoroughly present your case. Your sentencing hearing is going to flash by so fast you'll walk out of the court room dizzy. You and your defense team need to go into that hearing fully prepared, having already filed a sentencing memorandum.

The plea agreement you sign is going to affect you and your case well after you are sentenced. Plea agreements can be tricky business and if you are not careful or are in a bad defense position (the case against you is strong), your agreement may get the best of you. There are many issues in a plea to negotiate over. But essentially my advice would be to avoid signing away your right to appeal. Once you get to a real prison with real jailhouse lawyers you will find out how bad you got screwed. That issue notwithstanding, you are most likely going to want to appeal. This being the case you need to remember two things: bring all your appealable issues up at sentencing and file a notice of appeal within 10 days of your sentencing. Snooze and loose.

I should however, mention that you can appeal some issues even though you signed away your rights to appeal. For example, you can not sign away your right to appeal an illegal sentence. If the judge orders something that is not permissible by statute, you then have a constitutional right to appeal your sentence.

I will close this subpart with a prison joke. Q: How can you tell when your attorney is lying? A: You can see his lips moving.

D. CONSPIRACY

Whatever happened to getting off on a technicality? I'm sorry to say those days are gone, left only to the movies. The courts generally dismiss many arguments as "harmless error" or "the government acted in good faith". The most alarming trend, and surely the root of the prosecutions success, are the liberally worded conspiracy laws. Quite simply, if two or more people plan to do something illegal, then one of them does something in furtherance of the objective (even something legal), then it's a crime. Yes, it's true. In America it's illegal to simply talk about committing a crime. Paging Mr. Orwell. Hello?

Here's a hypothetical example to clarify this. Bill G. and Marc A. are hackers (can you imagine?) Bill and Marc are talking on the phone and unbeknownst to them the FBI is recording the call. They talk about hacking into Apple's mainframe and erasing the prototype of the new Apple Web Browser. Later that day, Marc does some legitimate research to find out what type of mainframe and operating system Apple uses. The next morning, the Feds raid Marc's house and seize everything that has wires. Bill and Marc go to trial and spend millions to defend themselves. They are both found guilty of conspiracy to commit unauthorized access to a computer system.

E. SENTENCING

At this point it is up to the probation department to prepare a report for the court. It is their responsibility to calculate the loss and identify any aggravating or mitigating circumstances. Apple Computer Corporation estimates that if Bill and M arc would have been successful it would have resulted in a loss of $2 million. This is the figure the court will use. Based on this basic scenario our dynamic duo would receive roughly three-year sentences.

As I mentioned, sentencing is complex and many factors can decrease or increase a sentence, usually the latter. Let's say that the FBI also found a file on Marc's computer with 50,000 unauthorized account numbers and passwords to The Microsoft Network. Even if the FBI does not charge him with this, it could be used to increase his sentence. Generally the government places a $200-per-account attempted loss on things of this nature (i.e. credit card numbers and passwords = access devices). This makes for a $10 million loss. Coupled with the $2 million from Apple, Marc is going away for about nine years. Fortunately there is a Federal Prison not too far from Redmond, WA so Bill could come visit him.

Some of the other factors to be used in the calculation of a sentence might include the following: past criminal record, how big your role in the offense was, mental disabilities, whether or not you were on probation at the time of the offense, if any weapons were used, if any threats were used, if your name is Kevin Mitnick (heh), if an elderly person was victimized, if you took advantage of your employment position, if you are highly trained and used your special skill, if you cooperated with the authorities, if you show remorse, if you went to trial, etc.

These are just some of the many factors that could either increase or decrease a sentence. It would be beyond the scope of this article to cover the U.S.S.G. in complete detail. I do feel that I have skipped over some significant issues. Neverthele ss, if you remember my two main points in addition to how the conspiracy law works, you'll be a long way ahead in protecting yourself.

F. USE OF A SPECIAL SKILL

The only specific "sentencing enhancement" I would like to cover would be one that I am responsible for setting a precedent with. In U.S. v Petersen, 98 F.3d. 502, 9th Cir., the United States Court of Appeals held that some computer hackers may qualify for the special skill enhancement. What this generally means is a 6 to 24 month increase in a sentence. In my case it added eight months to my 33-month sentence bringing it to 41 months. Essentially the court stated that since I used my "sophisticated" hacking skills towards a legitimate end as a computer security consultant, then the enhancement applies. It's ironic that if I were to have remained strictly a

criminal hacker then I would have served less time.

The moral of the story is that the government will find ways to give you as much time as they want to. The U.S.S.G. came into effect in 1987 in an attempt to eliminate disparity in sentencing. Defendants with similar crimes and similar backgrounds would often receive different sentences. Unfortunately, this practice still continues. The U.S.S.G. are indeed a failure.

G. GETTING BAIL

In the past, the Feds might simply have executed their raid and then left without arresting you. Presently this method will be the exception rather than the rule and it is more likely that you will be taken into custody at the time of the raid. Chances are also good that you will not be released on bail. This is part of the government's plan to break you down and win their case. If they can find any reason to deny you bail they will. In order to qualify for bail, you must meet the following criteri a:

- You must be a resident of the jurisdiction in which you were arrested.

- You must be gainfully employed or have family ties to the area.

- You cannot have a history of failure to appear or escape.

- You cannot be considered a danger or threat to the community.

In addition, your bail can be denied for the following reasons:

- Someone came forward and stated to the court that you said you would flee if released.

- Your sentence will be long if convicted.

- You have a prior criminal history.

- You have pending charges in another jurisdiction.

What results from all this "bail reform" is that only about 20% of persons arrested make bail. On top of that it takes 1-3 weeks to process your bail papers when property is involved in securing your bond.

Now you're in jail, more specifically you are either in an administrative holding facility or a county jail that has a contract with the Feds to hold their prisoners. Pray that you are in a large enough city to justify its own Federal Detention Center. County jails are typically the last place you would want to be.

H. STATE VS. FEDERAL CHARGES

In some cases you will be facing state charges with the possibility of the Feds "picking them up." You may even be able to nudge the Feds into indicting you. This is a tough decision. With the state you will do considerably less time, but will face a tougher crowd and conditions in prison. Granted Federal Prisons can be violent too, but generally as a non-violent white collar criminal you will eventually be placed into an environment with other low security inmates. More on this later.

Until you are sentenced, you will remain as a "pretrial inmate" in general population with other inmates. Some of the other inmates will be predatorial but the Feds do not tolerate much nonsense. If someone acts up, they'll get thrown in the hole. If they continue to pose a threat to the inmate population, they will be left in segregation (the hole). Occasionally inmates that are at risk or that have been threatened will be placed in segregation. This isn't really to protect the inmate. It is to pr otect the prison from a lawsuit should the inmate get injured.

I. COOPERATING

Naturally when you are first arrested the suits will want to talk to you.

First at your residence and, if you appear to be talkative, they will take you back to their offices for an extended chat and a cup of coffee. My advice at this point is tried and true and we've all heard it before: remain silent and ask to speak with an attorney. Regardless of what the situation is, or how you plan to proceed, there is nothing you can say that will help you. Nothing. Even if you know that you are going to cooperate, this is not the time.

This is obviously a controversial subject, but the fact of the matter is roughly 80% of all defendants eventually confess and implicate others. This trend stems from the extremely long sentences the Feds are handing out these days. Not many people want to do 10 to 20 years to save their buddies' hides when they could be doing 3 to 5. This is a decision each individual needs to make. My only advice would be to save your close friends and family. Anyone else is fair game. In the prison system the blacks have a saying "Getting down first." It's no secret that the first defendant in a conspiracy is usually going to get the best deal. I've even seen situations where the big fish turned in all his little fish and eceived 40% off his sentence.

Incidently, being debriefed or interrogated by the Feds can be an ordeal in itself. I would -highly- reccommend reading up on interrogation techniques ahead of time. Once you know their methods it will be all quite transparent to you and the debriefing goes much more smoothly.

When you make a deal with the government you're making a deal with the devil himself. If you make any mistakes they will renege on the deal and you'll get nothing. On some occasions the government will trick you into thinking they want you to cooperate when they are not really interested in anything you have to say. They just want you to plead guilty. When you sign the cooperation agreement there are no set promises as to how much of a sentence reduction you will receive. That is to be decided after your testimony, etc. and at the time of sentencing. It's entirely up to the judge. However, the prosecution makes the recommendation and the judge generally goes along with it. In fact, if the prosecution does not motion the court for your "downward departure" the courts' hands are tied and you get no break.

As you can see, cooperating is a tricky business. Most people, particularly those who have never spent a day in jail, will tell you not to cooperate. "Don't snitch." This is a noble stance to take. However, in some situations it is just plain stupid. Saving someone's ass who would easily do the same to you is a tough call. It's something that needs careful consideration. Like I said, save your friends then do what you have to do to get out of prison and on with your life.

I'm happy to say that I was able to avoid involving my good friends and a former employer in the massive investigation that surrounded my case. It wasn't easy. I had to walk a fine line. Many of you probably know that I (Agent Steal) went to work for the FBI after I was arrested. I was responsible for teaching several agents about hacking and the culture. What many of you don't know is that I had close FBI ties prior to my arrest. I was involved in hacking for over 15 years and had worked as a comp uter security consultant. That is why I was given that opportunity. It is unlikely however, that we will see many more of these types of arrangements in the future. Our relationship ran afoul, mostly due to their passive negligence and lack of experience in dealing with hackers. The government in general now has their own resources, experience, and undercover agents within the community. They no longer need hackers to show them the ropes or the latest security hole.

Nevertheless, if you are in the position to tell the Feds something they don't know and help them build a case against someone, you may qualify for a sentence reduction. The typical range is 20% to 70%. Usually it's around 35% to 50%.
Sometimes you may find yourself at the end of the prosecutorial food chain and the government will not let you cooperate. Kevin Mitnick would be a good example of this. Even if he wanted to roll over, I doubt it would get him much. He's just too big of a fish, too much media. My final advice in this matter is get the deal in writing before you start cooperating.

The Feds also like it when you "come clean" and accept responsibility. There is a provision in the Sentencing Guidelines, 3E1.1, that knocks a little bit of time off if you confess to your crime, plead guilty and show remorse. If you go to trial, typically you will not qualify for this "acceptance of responsibility" and your sentence will be longer.

J. STILL THINKING ABOUT TRIAL

Many hackers may remember the Craig Neidorf case over the famous 911 System Operation documents. Craig won his case when it was discovered that the manual in question, that he had published in Phrack magazine, was not proprietary as claimed but available publicly from AT&T. It was an egg in the face day for the Secret Service.

Don't be misled by this. The government learned a lot from this fiasco and even with the laudable support from the EFF, Craig narrowly thwarted off a conviction. Regardless, it was a trying experience (no pun intended) for him and his attorneys. Th e point I'm trying to make is that it's tough to beat the Feds. They play dirty and will do just about anything, including lie, to win their case. If you want to really win you need to know how they build a case in the first place.

K. SEARCH AND SEIZURE

There is a document entitled "Federal Guidelines For Searching And Seizing Computers." It first came to my attention when it was published in the 12-21-94 edition of the Criminal Law Reporter by the Bureau of National Affairs (Cite as 56 CRL 2023) . It's an intriguing collection of tips, cases, mistakes and, in general, how to bust computer hackers. It's recommended reading.

Search and seizure is an ever evolving jurisprudence. What's not permissible today may, through some convoluted Supreme Court logic, be permissible and legal tomorrow. Again, a complete treatment of this subject is beyond the scope of this paper. But suffice it to say if a Federal agent wants to walk right into your bedroom and seize all of your computer equipment without a warrant he could do it by simply saying he had probable cause (PC). PC is anything that gives him an inkling to believe you we re committing a crime. Police have been known to find PC to search a car when the trunk sat too low to the ground or the high beams were always on.

L. SURVEILLANCE AND WIRETAPS

Fortunately the Feds still have to show a little restraint when wielding their wiretaps. It requires a court order and they have to show that there is no other way to obtain the information they seek, a last resort if you will. Wiretaps are also expensive to operate. They have to lease lines from the phone company, pay agents to monitor it 24 hours a day and then transcribe it. If we are talking about a data tap, there are additional costs. Expensive interception/translation equipment must be in place to negotiate the various modem speeds. Then the data has to be stored, deciphered, decompressed, formatted, protocoled, etc. It's a daunting task and usually reserved for only the highest profile cases. If the Feds can seize the data from any other so urce, like the service provider or victim, they will take that route. I don't know what they hate worse though, asking for outside help or wasting valuable internal resources.

The simplest method is to enlist the help of an informant who will testify "I saw him do it!," then obtain a search warrant to seize the evidence on your computer. Ba da boom, ba da busted.

Other devices include a pen register which is a device that logs every digit you dial on your phone and the length of the calls, both incoming and outgoing. The phone companies keep racks of them at their security departments. They can place one on your line within a day if they feel you are defrauding them. They don't need a court order, but the Feds do.

A trap, or trap and trace, is typically any method the phone company uses to log every number that calls a particular number. This can be done on the

switching system level or via a billing database search. The Feds need a court order for this information too. However, I've heard stories of cooperative telco security investigations passing the information along to an agent. Naturally that would be a "harmless error while acting in good faith." (legal humor)

I'd love to tell you more about FBI wiretaps but this is as far as I can go without pissing them off. Everything I've told you thus far is public knowledge. So I think I'll stop here. If you really want to know more, catch Kevin Poulsen (Dark Dante) at a cocktail party, buy him a Coke and he'll give you an earful. (hacker humor)

In closing this subpart I will say that most electronic surveillance is backed up with at least part-time physical surveillance. The Feds are often good at following people around. They like late model mid-sized American cars, very stock, with no decals or bumper stickers. If you really want to know if you're under surveillance, buy an Opto-electronics Scout or Xplorer frequency counter. Hide it on your person, stick an ear plug in your ear (for the Xplorer) and take it everywhere you go. If you he ar people talking about you, or you continue to hear intermittent static (encrypted speech), you probably have a problem.

M. YOUR PRESENTENCE INVESTIGATION REPORT, PSI OR PSR

After you plead guilty you will be dragged from the quiet and comfort of your prison cell to meet with a probation officer. This has absolutely nothing to do with getting probation. Quite the contrary. The P.O. is empowered by the court to prepare a complete and, in theory, unbiased profile of the defendant. Everything from education, criminal history, psychological behavior, offense characteristics plus more will be included in this voluminous and painfully detailed report about your life. Every little dirty scrap of information that makes you look like a sociopathic, demon worshiping, loathsome criminal will be included in this report. They'll put a few negative things in there as well.

My advice is simple. Be careful what you tell them. Have your attorney present and think about how what you say can be used against you. Here's an example:

P.O.: Tell me about your education and what you like to do in your spare time.

Mr. Steal: I am preparing to enroll in my final year of college. In my spare time I work for charity helping orphan children.

The PSR then reads "Mr. Steal has never completed his education and hangs around with little children in his spare time."

Get the picture?

J. PROCEEDING PRO SE

Pro Se or Pro Per is when a defendant represents himself. A famous lawyer once said "a man that represents himself has a fool for a client." Truer words were never spoken. However, I can't stress how important it is to fully understand the criminal justice system. Even if you have a great attorney it's good to be able to keep an eye on him or even help out. An educated client's help can be of enormous benefit to an attorney. They may think you're a pain in the ass but it's your life. Take a hold of it. Regardless, representing yourself is generally a mistake.

However, after your appeal, when your court appointed attorney runs out on you, or you have run out of funds, you will be forced to handle matters yourself. At this point there are legal avenues, although quite bleak, for post-conviction
relief.

But I digress. The best place to start in understanding the legal system lies in three inexpensive books. First the Federal Sentencing Guidelines ($14.00) and Federal Criminal Codes and Rules ($20.00) are available from West Publishing at 800-328-9 352. I consider possession of these books to

be mandatory for any pretrial inmate. Second would be the Georgetown Law Journal, available from Georgetown University Bookstore in Washington, DC. The book sells for around $40.00 but if you write them a letter and tell them you're a Pro Se litigant they will send it for free. And last but not least the definitive Pro Se authority, "The Prisoners Self Help Litigation Manual"
$29.95 ISBN 0-379-20831-8. Or try http://www.oceanalaw.com/books/n148.htm

O. EVIDENTIARY HEARING

If you disagree with some of the information presented in the presentence report (PSR) you may be entitled to a special hearing. This can be instrumental in lowering your sentence or correcting your PSR. One important thing to know is that your PSR will follow you the whole time you are incarcerated. The Bureau of Prisons uses the PSR to decide how to handle you. This can affect your security level, your halfway house, your eligibility for the drug program (which gives you a year off your sentence) ,and your medical care. So make sure your PSR is accurate before you get sentenced!

P. GETTING YOUR PROPERTY BACK

In most cases it will be necessary to formally ask the court to have your property returned. They are not going to just call you up and say "Do you want this Sparc Station back or what?" No, they would just as soon keep it and not asking for it is as good as telling them they can have it.

You will need to file a 41(e) "Motion For Return Of Property." The courts' authority to keep your stuff is not always clear and will have to be taken on a case-by-case basis. They may not care and the judge will simply order that it be returned.

If you don't know how to write a motion, just send a formal letter to the judge asking for it back. Tell him you need it for your job. This should suffice, but there may be a filing fee.

Q. OUTSTANDING WARRANTS

If you have an outstanding warrant or charges pending in another jurisdiction you would be wise to deal with them as soon as possible -after- you are sentenced. If you follow the correct procedure chances are good the warrants will be dropped (quashed). In the worst case scenario, you will be transported to the appropriate jurisdiction, plead guilty and have your "time run concurrent." Typically in non-violent crimes you can serve several sentences all at the same time. Many Federal inmates have their state time run with their Federal time. In a nutshell: concurrent is good, consecutive bad.

This procedure is referred to as the Interstate Agreement On Detainers Act (IADA). You may also file a "demand for speedy trial", with the appropriate court. This starts the meter running. If they don't extradite you within a certain period of time , the charges will have to be dropped. The "Inmates' Self-Help Litigation Manual" that I mentioned earlier covers this topic quite well.

R. ENCRYPTION

There are probably a few of you out there saying, "I triple DES encrypt my hard drive and 128 character RSA public key it for safety." Well, that's just great, but... the Feds can have a grand jury subpoena your passwords and if you don't give them up you may be charged with obstruction of justice. Of course who's to say otherwise if you forgot your password in all the excitement of getting arrested. I think I heard this once or twice before in a Senate Sub-committee hearing. "Senator, I have no recollection of the aforementioned events at this time." But seriously, strong encryption is great. However, it would be foolish to rely on it. If the Feds have your computer and access to your encryption software itself, it is likely they could break it gi ven the motivation. If you understand the true art of code breaking you should understand this. People often overlook the fact that your password, the one you use to access your encryption

program, is typically less than 8 characters long. By attacking the access to your encryption program with a keyboard emulation sequencer your triple DES/128 bit RSA crypto is worthless. Just remember, encryption may not protect you.

S. LEGAL SUMMARY

Before I move on to the Life in Prison subpart, let me tell you what this all means. You're going to get busted, lose everything you own, not get out on bail, snitch on your enemies, get even more time than you expected and have to put up with a bu nch of idiots in prison. Sound fun? Keep hacking. And, if possible, work on those sensitive .gov sites. That way they can hang an espionage rap on you. That will carry about 12 to 18 years for a first time offender.

I know this may all sound a bit bleak, but the stakes for hackers have gone up and you need to know what they are. Let's take a look at some recent sentences:

Agent Steal (me) 41 months

Kevin Poulsen 51 months

Minor Threat 70 months

Kevin Mitnick estimated 7-9 years

As you can see, the Feds are giving out some time now. If you are young, a first-time offender, unsophisticated (like MOD), and were just looking around in some little company's database, you might get probation. But chances are that if that is all you were doing, you would have been passed over for prosecution. As a rule, the Feds won't take the case unless $10,000 in damages are involved. The problem is who is to say what the loss is? The company can say whatever figure it likes and it would be t ough to prove otherwise. They may decide to, for insurance purposes, blame some huge downtime expense on you. I can hear it now, "When we detected the intruder, we promptly took our system off-line. It took us two weeks to bring it up again for a loss in wasted manpower of $2 million." In some

ases you might be better off just using the company's payroll system to cut you a couple of $10,000 checks. That way the government has a firm loss figure. This would result in a much shorter sentence. I'm not advocating blatant criminal actions. I just think the sentencing guidelines definitely need some work.

PART II - FEDERAL PRISON

A. STATE v. FEDERAL

In most cases I would say that doing time in a Federal Prison is better than doing time in the state institutions. Some state prisons are such violent and pathetic places that it's worth doing a little more time in the Federal system. This is going to be changing however. The public seems to think that prisons are too comfortable and as a result Congress has passed a few bills to toughen things up.

Federal prisons are generally going to be somewhat less crowded, cleaner, and more laid back. The prison I was at looked a lot like a college campus with plenty of grass and trees, rolling hills, and stucco buildings. I spent most of my time in the library hanging out with Minor Threat. We would argue over who was more elite. "My sentence was longer," he would argue. "I was in more books and newspapers," I would rebut. (humor)

Exceptions to the Fed is better rule would be states that permit televisions and word processors in your cell. As I sit here just prior to release scribbling this article with pen and paper I yearn for even a Smith Corona with one line display. The states have varying privileges. You could wind up someplace where everything gets stolen from you. There are also states that are abolishing parole, thus taking away the ability to get out early with good behavior. That is what the Feds did.

B. SECURITY LEVELS

The Bureau of Prisons (BOP) has six security levels. Prisons are assigned a security level and only prisoners with the appropriate ratings are housed there. Often the BOP will have two or three facilities at one location. Still, they are essentially separate prisons, divided by fences.

The lowest level facility is called a minimum, a camp, or FPC. Generally speaking, you will find first time, non-violent offenders with less than 10 year sentences there. Camps have no fences. Your work assignment at a camp is usually off the prison grounds at a nearby military base. Other times camps operate as support for other nearby prisons.

The next level up is a low Federal Correctional Institution (FCI). These are where you find a lot of people who should be in a camp but for some technical reason didn't qualify. There is a double fence with razor wire surrounding it. Again you will find mostly non-violent types here. You would really have to piss someone off before they would take a swing at you.

Moving up again we get to medium and high FCI's which are often combined. More razor wire, more guards, restricted movement and a rougher crowd. It's also common to find people with 20 or 30+ year sentences. Fighting is much more common. Keep to yourself, however, and people generally leave you alone. Killings are not too terribly common. With a prison population of 1500-2000, about one or two a year leave on a stretcher and don't come back.

The United States Penatentury (U.S.P.) is where you find the murderers, rapists, spies and the roughest gang bangers. "Leavenworth" and "Atlanta" are the most infamous of these joints. Traditionally surrounded by a 40 foot brick wall, they take on an ominous appearance. The murder rate per prison averages about 30 per year with well over 250 stabbings.

The highest security level in the system is Max, sometimes referred to as "Supermax." Max custody inmates are locked down all the time. Your mail is shown to you over a TV screen in your cell. The shower is on wheels and it comes to your door. You rarely see other humans and if you do leave your cell you will be handcuffed and have at least a three guard escort. Mr. Gotti, the Mafia boss, remains in Supermax. So does Aldridge Ames, the spy.

C. GETTING DESIGNATED

Once you are sentenced, the BOP has to figure out what they want to do with you. There is a manual called the "Custody and Classification Manual" that they are supposed to follow. It is publicly available through the Freedom of Information Act and it is also in most prison law libraries. Unfortunately, it can be interpreted a number of different ways. As a result, most prison officials responsible for classifying you do pretty much as they please.

Your first classification is done by the Region Designator at BOP Regional Headquarters. As a computer hacker you will most likely be placed in a camp or a low FCI. This is assuming you weren't pulling bank jobs on the side. -IF- you do wind up in an FCI, you should make it to a camp after six months. This is assuming you behave yourself.

Another thing the Region Designator will do is to place a "Computer No" on your file. This means you will not be allowed to operate a computer at your prison work assignment. In my case I wasn't allowed to be within 10 feet of one. It was explained to me that they didn't even want me to know the types of software they were running. Incidentally, the BOP uses PC/Server based LANs with NetWare 4.1 running on Fiber 10baseT Ethernet connections to Cabletron switches and hubs. PC based gateways reside a t every prison. The connection to the IBM mainframe (Sentry) is done through leased lines via Sprintnet's Frame Relay service with 3270 emulation software/hardware resident on the local servers. Sentry resides in Washington, D.C. with SNA type network con centrators at the regional offices. ;-) And I picked all of this up without even trying to. Needless to say, BOP computer security is very lax. Many of their publicly available "Program Statements" contain specific information on how to use Sentry and wha t it's designed to do.

They have other networks as well, but this is not a tutorial on how to hack the BOP. I'll save that for if they ever really piss me off. (humor)

Not surprisingly, the BOP is very paranoid about computer hackers. I went out of my way not to be interested in their systems or to receive computer security related mail. Nevertheless, they tried restricting my mail on numerous occasions. After I filed numerous grievances and had a meeting with the warden, they decided I was probably going to behave myself. My 20 or so magazine subscriptions were permitted to come in, after a special screening. Despite all of that I still had occasional problems, usually when I received something esoteric in nature. It's my understanding, however, that many hackers at other prisons have not been as fortunate as I was.

D. IGNORANT INMATES

You will meet some of the stupidest people on the planet in prison. I suppose that is why they are there, too dumb to do anything except crime. And for some strange reason these uneducated low class common thieves think they deserve your respect. In fact they will often demand it. These are the same people that condemn everyone who cooperated, while at the same time feel it is fine to break into your house or rob a store at gunpoint. These are the types of inmates you will be incarcerated with, an d occasionally these inmates will try to get over on you. They will do this for no reason other than the fact you are an easy mark.

There are a few tricks hackers can do to protect themselves in prison. The key to your success is acting before the problem escalates. It is also important to have someone outside (preferably another hacker) that can do some social engineering for you. The objective is simply to have your problem inmate moved to another institution. I don't want to give away my methods but if staff believes that an inmate is going to cause trouble, or if they believe his life is in danger, they will move him or loc k him away in segregation. Social engineered letters (official looking) or phone calls from the right source to the right department will often evoke brisk action. It's also quite simple to make an inmates life quite miserable. If the BOP has reason to be lieve that an inmate is an escape risk, a suicide threat, or had pending charges, they will handle them much differently. Tacking these labels on an inmate would be a real nasty trick. I have a saying: "Hackers usually have the last word in arguments." In deed.

Chances are you won't have many troubles in prison. This especially applies if you go to a camp, mind your own business, and watch your mouth. Nevertheless, I've covered all of this in the event you find yourself caught up in the ignorant behavior of inmates whose lives revolve around prison. And one last piece of advice, don't make threats, truly stupid people are too stupid to fear anything, particularly an intelligent man. Just do it.

E. POPULATION

The distribution of blacks, whites and Hispanics varies from institution to institution. Overall it works out to roughly 30% white, 30% Hispanic and 30% black. The remaining 10% are various other races. Some joints have a high percent of blacks and vice versa. I'm not necessarily a prejudiced person, but prisons where blacks are in majority are a nightmare. Acting loud, disrespectful, and trying to run the place is par for the course.

In terms of crimes, 60% of the Federal inmate population are incarcerated for drug related crimes. The next most common would be bank robbery (usually for quick drug money), then various white collar crimes. The Federal prison population has changed over the years. It used to be a place for the criminal elite. The tough drug laws have changed all of that.

Just to quell the rumors, I'm going to cover the topic of prison rape. Quite simply, in medium and low security level Federal prisons it is unheard of. In the highs it rarely happens. When it does happen, one could argue that the victim was asking for it. I heard an inmate say once, "You can't make no inmate suck cock that don't wanta." Indeed. In my 41 months of incarceration, I never felt in any danger. I would occasionally have

inmates that would subtly ask me questions to see where my preferences lie, but once I made it clear that I didn't swing that way I would be left alone. Hell, I got hit on more often when I was hanging out in Hollywood!

On the other hand, state prisons can be a hostile environment for rape and fighting in general. Many of us heard how Bernie S. got beat up over use of the phone. Indeed, I had to get busy a couple of times. Most prison arguments occur over three simple things: the phone, the TV and money/drugs. If you want to stay out of trouble in a state prison, or Federal for that matter, don't use the phone too long, don't change the channel and don't get involved in gambling or drugs. As far as rape goes, pick your friends carefully and stick with them. And always, always, be respectful. Even if the guy is a fucking idiot (and most inmates are), say excuse me.

My final piece of prison etiquette advice would be to never take your inmate problems to "the man" (prison staff). Despite the fact that most everyone in prison snitched on their co-defendants at trial, there is no excuse for being a prison rat. Th e rules are set by the prisoners themselves. If someone steps out of line there will likely be another inmate who will be happy to knock him back. In some prisons inmates are so afraid of being labeled a rat that they refuse to be seen talking alone with a prison staff member. I should close this paragraph by stating that this bit of etiquette is routinely ignored as other inmates will snitch on you for any reason whatsoever. Prison is a strange environment.

F. DOING TIME

You can make what you want to out of prison. Some people sit around and do dope all day. Others immerse themselves in a routine of work and exercise. I studied technology and music. Regardless, prisons are no longer a place of rehabilitation. They serve only to punish and conditions are only going to worsen. The effect is that angry, uneducated, and unproductive inmates are being released back into society.

While I was incarcerated in 95/96, the prison band program was still in operation. I played drums for two different prison bands. It really helped pass the time and when I get out I will continue with my career in music. Now the program has been canceled, all because some senator wanted to be seen as being tough on crime. Bills were passed in Congress. The cable TV is gone, pornography mags are no longer permitted, and the weight piles are being removed. All this means is that prisoners will have m ore spare time on their hands, and so more guards will have to be hired to watch the prisoners. I don't want to get started on this subject. Essentially what I'm saying is make something out of your time. Study, get into a routine and before you know
you 'll be going home, and a better person on top of it.

G. DISCIPLINARY ACTIONS

What fun is it if you go to prison and don't get into some mischief? Well, I'm happy to say the only "shots" (violations) I ever received were for having a friend place a call with his three-way calling for me (you can't call everyone collect), and drinking homemade wine. |-) The prison occasionally monitors your phone calls and on the seven or eight hundredth time I made a three-way I got caught. My punishment was ten hours of extra duty (cleaning up). Other punishments for shots include loss of phone use, loss of commissary, loss of visits, and getting thrown in the hole. Shots can also increase your security level and can get you transferred to a higher level institution. If you find yourself having trouble in this area you may want to pick up t he book, "How to win prison disciplinary hearings", by Alan Parmelee, 206-328-2875.

H. ADMINISTRATIVE REMEDY

If you have a disagreement with the way staff is handling your case (and you will) or another complaint, there is an administrative remedy procedure. First you must try to resolve it informally. Then you can file a form BP-9. The BP-9 goes to the warden. After that you can file a BP-10 which goes to the region. Finally, a BP-11 goes to the National BOP

Headquarters (Central Office). The whole procedure is a joke and takes about six months to complete. Delay and conquer is the BOP motto. After you c omplete the remedy process to no avail, you may file your action in a civil court. In some extreme cases you may take your case directly to the courts without exhausting the remedy process. Again, the "Prisoners Self-Help Litigation Manual" covers this qu ite well.

My best advice with this remedy nonsense is to keep your request brief, clear, concise and only ask for one specific thing per form. Usually if you "got it coming" you will get it. If you don't, or if the BOP can find any reason to deny your request, they will.

For this reason I often took my problems outside the prison from the start. If it was a substantial enough issue I would inform the media, the director of the BOP, all three of my attorneys, my judge and the ACLU. Often this worked. It always pisse d them off. But, alas I'm a man of principle and if you deprive me of my rights I'm going to raise hell. In the past I might have resorted to hacker tactics, like disrupting the BOP's entire communication system bringing it crashing down! But...I'm rehabilitated now. Incidently, most BOP officials and inmates have no concept of the kind of havoc a hacker can wield on an individuals life. So until some hacker shows the BOP which end is up you will have to accept the fact most everyone you meet in prison will have only nominal respect for you. Deal with it, you're not in cyberspace anymore.

I. PRISON OFFICIALS

There are two types, dumb and dumber. I've had respect for several but I've never met one that impressed me as being particularly talented in a way other than following orders. Typically you will find staff that are either just doing their job, or staff that is determined to advance their career. The latter take their jobs and themselves way too seriously. They don't get anywhere by being nice to inmates so they are often quite curt. Ex-military and law enforcement wannabes are commonplace. All in all they're a pain in the ass but easy to deal with. Anyone who has ever been down (incarcerated) for awhile knows it's best to keep a low profile. If they don't know you by name you're in good shape.

One of the problems that computer hackers will encounter with prison staff is fear and/or resentment. If you are a pretentious articulate educated white boy like myself you would be wise to act a little stupid. These people don't want to respect yo u and some of them will hate everything that you stand for. Many dislike all inmates to begin with. And the concept of you someday having a great job and being successful bothers them. It's all a rather bizarre environment where everyone seems to hate the ir jobs. I guess I've led a sheltered life.

Before I move on, sometimes there will be certain staff members, like your Case Manager, that will have a substantial amount of control over your situation. The best way to deal with the person is to stay out of their way. Be polite, don't file grievances against them and hope that they will take care of you when it comes time. If this doesn't seem to work, then you need to be a total pain in the ass and ride them with every possible request you can muster. It's especially helpful if you have outsi de people willing to make calls. Strong media attention will usually, at the very least, make the prison do what they are supposed to do. If you have received a lot of bad press, this could be a disadvantage. If you care continues to be a problem, the pr ison will transfer you to another facility where you are more likely to get a break. All in all how you choose to deal with staff is often a difficult decision. My advice is that unless you are really getting screwed over or really hate the prison you are in, don't rock the boat.

J. THE HOLE

Segregation sucks, but chances are you will find yourself there at some point and usually for the most ridiculous of reasons. Sometimes you will wind up there because of what someone else did. The hole is a 6' x 10' concrete room with a steel bed and steel toilet. Your privileges will vary, but at first you get nothing but a shower every couple of days. Naturally

they feed you but, it's never enough, and it's often cold. With no snacks you often find yourself quite hungry in-between meals. There is nothing to do there except read and hopefully some guard has been kind enough to throw you some old novel.

Disciplinary actions will land you in the hole for typically a week or two. In some cases you might get stuck there for a month or three. It depends on the shot and on the Lieutenant that sent you there. Sometimes people never leave the hole....

K. GOOD TIME

You get 54 days per year off of your sentence for good behavior. If anyone tells you that a bill is going to be passed to give 108 days, they are lying. 54 days a year works out to 15% and you have to do something significant to justify getting that taken away. The BOP has come up with the most complicated and ridiculous way to calculate how much good time you have earned. They have
a book about three inches thick that discusses how to calculate your exact release date. I studied the book intensely and came to the conclusion that the only purpose it serves is to covertly steal a few days of good time from you. Go figure.

L. HALFWAY HOUSE

All "eligible" inmates are to serve the last 10% of their sentence (not to exceed six months) in a Community Corrections Center (CCC). At the CCC, which is nothing more than a large house in a bad part of town, you are to find a job in the communit y and spend your evenings and nights at the CCC. You have to give 25% of the gross amount of your check to the CCC to pay for all of your expenses, unless you are a rare Federal prisoner sentenced to serve all of your time at the CCC in which case it is 1 0%. They will breathalyse and urinanalyse you routinely to make sure you are not having too much fun. If you're a good little hacker you'll get a weekend pass so you can stay out all night. Most CCCs will transfer you to home confinement status after a few weeks. This means you can move into your own place, (if they approve it) but still have to be in for the evenings. They check up on you by phone. And no, you are not allowed call forwarding, silly rabbit.

M. SUPERVISED RELEASE

Just when you think the fun is all over, after you are released from prison or the CCC, you will be required to report to a Probation Officer. For the next 3 to 5 years you will be on Supervised Release. The government abolished parole, thereby preventing convicts from getting out of prison early. Despite this they still want to keep tabs on you for awhile.

Supervised Release, in my opinion, is nothing more than extended punishment. You are a not a free man able to travel and work as you please. All of your activities will have to be presented to your Probation Officer (P.O.). And probation is essentially what Supervised Release is. Your P.O. can violate you for any technical violations and send you back to prison for several months, or over a year. If you have ANY history of drug use you will be required to submit to random (weekly) urinalyses. If you come up dirty it's back to the joint.

As a hacker you may find that your access to work with, or possession of computer equipment may be restricted. While this may sound pragmatic to the public, in practice it serves no other purpose that to punish and limit a former hacker's ability t o support himself. With computers at libraries, copy shops, schools, and virtually everywhere, it's much like restricting someone who used a car to get to and from a bank robbery to not ever drive again. If a hacker is predisposed to hacking he's going to be able to do it with or without restrictions. In reality many hackers don't even need a computer to achieve their goals. As you probably know a phone and a little social engineering go a long way.

But with any luck you will be assigned a reasonable P.O. and you will stay out of trouble. If you give your P.O. no cause to keep an eye on you, you may find the reins loosening up. You may also be able to have your

Supervised Release terminated ea rly by the court. After a year or so, with good cause, and all of your government debts paid, it might be plausible. Hire an attorney, file a motion.

For many convicts Supervised Release is simply too much like being in prison. For those it is best to violate, go back to prison for a few months, and hope the judge terminates their Supervised Release. Although the judge may continue your supervis ion, he/she typically will not.

N. SUMMARY

What a long strange trip it's been. I have a great deal of mixed emotions about my whole ordeal. I can however, say that I HAVE benefitted from my incarceration. However, it certainly was not on the behalf of how I was handled by the government. No , despite their efforts to kick me when I was down, use me, turn their backs after I had assisted them, and in general, just violate my rights, I was still able to emerge better educated than when I went in. But frankly, my release from prison was just in the nick of time. The long term effects of incarceration and stress were creeping up on me, and I could see prison conditions were worsening. It's hard to express the poignancy of the situation but the majority of those incarcerated feel that if drastic changes are not made America is due for some serious turmoil, perhaps even a civil war.
Yes, the criminal justice system is that screwed up. The Nation's thirst for vengeance on criminals is leading us into a vicious feedback loop of crime and punishment, and once again crime. Quite simply, the system is not working. My purpose in writing this article was not to send any kind of message. I'm not telling you how not to get caught and I'm not telling you to stop hacking. I wrote this simply because I feel l ike I owe it to whomever might get use of it. For some strange reason I am oddly compelled to tell you what happened to me. Perhaps this is some kind or therapy, perhaps it's just my ego, perhaps I just want to help some poor 18-year-old hacker who really doesn't know what he is getting himself in to. Whatever the reason, I just sat down one day and started writing.

If there is a central theme to this article it would be how ugly your world can become. Once you get grabbed by the law, sucked into their vacuum, and they shine the spotlight on you, there will be little you can do to protect yourself. The vultures and predators will try to pick what they can off of you. It's open season for the U.S. Attorneys, your attorney, other inmates, and prison officials. You become fair game. Defending yourself from all of these forces will require all of your wits, all of your resources, and occasionally your fists.

Furthering the humiliation, the press, as a general rule, will not be concerned with presenting the truth. They will print what suits them and often omit many relevant facts. If you have read any of the 5 books I am covered in you will no doubt have a rather jaded opinion of me. Let me assure you that if you met me today you would quickly see that I am quite likable and not the villain many (especially Jon Littman) have made me out to be. You may not agree with how I lived my life, but you wouldn't have any trouble understanding why I chose to live it that way. Granted I've made my mistakes, growing up has been a long road for me. Nevertheless, I have no shortage of good friends. Friends that I am immensely loyal to. But if you believe everything y ou read you'd have the impression that Mitnick is a vindictive loser, Poulsen a furtive stalker, and I a two faced rat. All of those assessments would be incorrect.

So much for first impressions. I just hope I was able to enlighten you and in some way to help you make the right choice. Whether it's protecting yourself from what could be a traumatic life altering experience, or compelling you to focus your computer skills on other avenues, it's important for you to know the program, the language, and the rules.

See you in the movies

Agent Steal
1997